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SOILWORKS, LLC, an Arizona corporation*

**UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF ARIZONA**

SOILWORKS, LLC, an Arizona corporation,

NO.: 2:06-CV-2141-DGC

Plaintiff / Counterdefendant /  
Counterclaimant,

## **SOILWORKS, LLC'S ANSWERS TO MIDWEST INDUSTRIAL SUPPLY, INC.'S FIRST SET OF INTERROGATORIES**

v.

MIDWEST INDUSTRIAL SUPPLY, INC.,  
an Ohio corporation authorized to do  
business in Arizona.

Defendant / Counterclaimant /  
Counterdefendant.

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, Plaintiff, Soilworks, LLC (“Soilworks”) hereby responds to Defendant Midwest Industrial Supply, Inc.’s (“Midwest”) First Set of Interrogatories, dated May 22, 2007.

## GENERAL STATEMENTS

1. Soilworks incorporates by reference each and every general objection set forth below into each and every specific response. From time to time a specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response shall not be interpreted as a waiver of any general objection to that response.

1 allegations made to date, Soilworks believes it is selling products that have been  
2 manufactured and sold for years prior to the date Midwest filed for patent protections,  
3 and Prior Art defenses apply. Furthermore, Midwest is directed to refer to the  
4 preliminary claims chart Soilworks produced with its responses to Midwest's requests  
5 for production. It is important to note that the claims chart is preliminary only and  
6 was produced in the absence of Midwest's claim construction / interpretation position  
7 and claims chart regarding its patent(s). In addition, Durasoil® is the only Soilwork's  
8 product about which an infringement argument has been made, and Soilworks will  
9 only provide the requested information about Durasoil®.

10 9. For each claim of the Midwest Patents identified in your Answer to  
11 Interrogatory No. 8, identify by column and line number (and/or by reference to the  
12 drawings) the disclosure in the Midwest Patents that you contend discloses and supports each  
13 element alleged to be absent from each such claim.

14 ANSWER: Objection. This interrogatory is premature. This case is still in its  
15 early stages, and until Midwest identifies its claim construction / interpretation position  
16 and provides a claims chart regarding its patent(s), Soilworks cannot fully respond to  
17 this interrogatory. Without waiving the foregoing objections, on the basis of the  
18 allegations made to date, Soilworks believes it is selling products that have been  
19 manufactured and sold for years prior to the date Midwest filed for patent protections,  
20 and Prior Art defenses apply. Furthermore, Midwest is directed to refer to the  
21 preliminary claims chart Soilworks produced with its responses to Midwest's requests  
22 for production. It is important to note that the claims chart is preliminary only and  
23 was produced in the absence of Midwest's claim construction / interpretation position  
24 and claims chart regarding its patent(s).

25 10. State Plaintiff's contentions, both factual and legal, concerning the claim  
26 construction it contends is the legally correct claim construction for all claims of the  
27 Midwest Patents. A complete answer to this interrogatory must include:

28 (a) an identification of each claim term or phrase that Plaintiff contends is

1           ambiguous or requires definition or construction beyond the language of the claim  
2           itself, and a fully detailed statement setting forth the meaning that Plaintiff contends is  
3           proper for such term(s);

4           (b)     an identification of each claim term or phrase that Plaintiff contends  
5           should be construed to have a meaning other than the ordinary and accustomed  
6           meaning for that term or phrase, and a full and detailed statement of the ordinary and  
7           accustomed meaning for that claim term or phrase, and the meaning that Plaintiff  
8           contends must be given that claim term or phrase and the reasons therefore;

9           (c)     an identification of each claim term or phrase that Plaintiff contends has  
10          been given a special meaning in the patent specification or file history, and a full and  
11          detailed statement of the special meaning, including an identification of all intrinsic  
12          evidence to the Midwest Patents setting forth such special meaning . and

13           (d)     an identification of each claim limitation that Plaintiff contends should  
14          be construed pursuant to 35 U.S.C. § 112, ¶ 6, and a fully detailed statement of the  
15          specified function, any structure, material or acts recited in the claim element for  
16          accomplishing that function, and the structure, material, or acts described in the  
17          specification for accomplishing that function.

18           **ANSWER: Objection.** This interrogatory is premature. This case is still in its  
19          early stages, and until Midwest identifies its claim construction / interpretation position  
20          and provides a claims chart regarding its patent(s), Soilworks cannot fully respond to  
21          this interrogatory. Without waiving the foregoing objections, on the basis of the  
22          allegations made to date, Soilworks believes it is selling products that have been  
23          manufactured and sold for years prior to the date Midwest filed for patent protections,  
24          and Prior Art defenses apply. Furthermore, Midwest is directed to refer to the  
25          preliminary claims chart Soilworks produced with its responses to Midwest's requests  
26          for production. It is important to note that the claims chart is preliminary only and  
27          was produced in the absence of Midwest's claim construction / interpretation position  
28          and claims chart regarding its patent(s).

1       ANSWER: Objection. This interrogatory is premature. Once the Court has  
2 entered a Protective Order which is mutually agreeable to all parties, Soilworks will  
3 make documents available from which Midwest may derive or ascertain the answer to  
4 this interrogatory pursuant to Rule 33(d), Fed.R.Civ.P., and such documents will speak  
5 for themselves. Without waiving the foregoing objections, see  
6 <http://www.durasoil.com/> and Soilwork's related websites.

7       14. Identify all ingredients (including, but not limited to, "proprietary" as listed in  
8 Section 2 of Plaintiff's MSDS sheet shown on Plaintiff's website,  
9 <http://www.durasoil.com/msds.php>), and the percentage composition of all ingredients of the  
10 Durasoil and Soiltac products and any products identified in response to Interrogatory No. 6.

11       ANSWER: Objection. This interrogatory is premature. Once the Court has  
12 entered a Protective Order which is mutually agreeable to all parties, Soilworks will  
13 make documents available from which Midwest may derive or ascertain the answer to  
14 this interrogatory pursuant to Rule 33(d), Fed.R.Civ.P., and such documents will speak  
15 for themselves. Without waiving the foregoing objections, Durasoil® is the only  
16 Soilwork's product about which an infringement argument has been made, and  
17 Soilworks will only provide the requested information about Durasoil®.

18       15. Identify all documents, reports, studies, chemical studies, opinions (whether  
19 lay, legal or scientific), patent searches, requested, obtained, or drafted by Plaintiff related to  
20 the Midwest Patents, Defendant or any of Defendant's products.

21       ANSWER: Objection. This interrogatory is premature. Once the Court has  
22 entered a Protective Order which is mutually agreeable to all parties, Soilworks will  
23 make documents available from which Midwest may derive or ascertain the answer to  
24 this interrogatory pursuant to Rule 33(d), Fed.R.Civ.P., and such documents will speak  
25 for themselves. Without waiving the foregoing objections, Durasoil® is the only  
26 Soilwork's product about which an infringement argument has been made, and  
27 Soilworks will only provide the requested information about Durasoil®. Furthermore,  
28 Soilworks does not believe at this point that information or documents responsive to

1       this interrogatory exist.

2       16. Identify all of the manufacturer(s) of the Durasoil, Soiltac and any products  
3 identified in response to Interrogatory No. 6. from the initial manufacturer to the present  
4 manufacturer.

5       ANSWER: Objection. This interrogatory is premature. Once the Court has  
6 entered a Protective Order which is mutually agreeable to all parties, Soilworks will  
7 make documents available from which Midwest may derive or ascertain the answer to  
8 this interrogatory pursuant to Rule 33(d), Fed.R.Civ.P., and such documents will speak  
9 for themselves. Without waiving the foregoing objections, Durasoil® is the only  
10 Soilwork's product about which an infringement argument has been made, and  
11 Soilworks will only provide the requested information about Durasoil®.

12       17. Identify any and all documents and electronically stored information utilizing  
13 or referencing Midwest's Marks including, but not limited to, any and all metatags, or  
14 Keywords used by Plaintiff.

15       ANSWER: Objection. This interrogatory is premature. Once the Court has  
16 entered a Protective Order which is mutually agreeable to all parties, Soilworks will  
17 make documents available from which Midwest may derive or ascertain the answer to  
18 this interrogatory pursuant to Rule 33(d), Fed.R.Civ.P., and such documents will speak  
19 for themselves.

20       18. Identify all Keywords Plaintiff has ever used and identify the dates each  
21 Keyword began being used by Defendant and the date the Keyword ceased being used by  
22 Defendant, if ended.

23       ANSWER: Objection. This interrogatory is premature. Once the Court has  
24 entered a Protective Order which is mutually agreeable to all parties, Soilworks will  
25 make documents available from which Midwest may derive or ascertain the answer to  
26 this interrogatory pursuant to Rule 33(d), Fed.R.Civ.P., and such documents will speak  
27 for themselves.

28       19. State, with specificity, how "Durasoil® is a revolutionary state-of-the art

innovation” and identify all documents in support.

**ANSWER:** Objection. This interrogatory is premature. Once the Court has entered a Protective Order which is mutually agreeable to all parties, Soilworks will make documents available from which Midwest may derive or ascertain the answer to this interrogatory pursuant to Rule 33(d), Fed.R.Civ.P., and such documents will speak for themselves.

20. Does Plaintiff believe that Durasoil is equal to, or better than, Defendant's EK35? If so, identify, with specificity, all documents supporting such belief.

ANSWER: Objection. This interrogatory is vague, overbroad and unintelligible due to lack of context. Before Soilworks can adequately respond to this interrogatory, Midwest must provide context or specify the particular application of Durasoil® about which is inquires.

Dated this 23rd day of July, 2007.

KUTAK ROCK LLP

By \_\_\_\_\_ /s/

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 23, 2007, the foregoing Soilworks, LLC's Answers to Midwest Industrial Supply, Inc.'s First Set of Interrogatories was served electronically upon the following:

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/s/  
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